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ON CONSENT

ADMINISTRATIVE ORDER ON CONSENT FOR REMOVAL ACTION

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I. INTRODUCTION

1. This Administrative Order on Consent for Removal Action ("Consent Order" or "Order") is entered into voluntarily by the United States Environmental Protection Agency ("EPA"), The Doe Run Resources Corporation, James and Jayne Bess, Damon and Helen Black, William and Pamela Hart, Robert and Robin House, John McCulloch, Howard and Darla Nichols, Donald Pinkston, and USCOC of Missouri RSA #13, Inc. ("Respondents"). This Consent Order provides for the performance of removal actions pursuant to 40 C.F.R. § 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), at a portion of the Bonne Terre Superfund Site (the "Site") located in Bonne Terre, Missouri. Part of the Bonne Terre Site is located east of Highway 67 in Bonne Terre, and part of the Site is located west of Highway 67. This Consent Order only addresses the area of the Site east of Highway 67. This Consent Order does not address any portion of the Site which is located west of Highway 67. This Consent Order also calls for reimbursement of certain future oversight costs incurred by EPA in connection with this Consent Order.

II. JURISDICTION

2. This Consent Order is issued pursuant to the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (1987), and was further delegated to the Regional Administrators on September 13, 1987, by EPA Delegation No. 14-14-C. This authority was subsequently delegated to the Director, Superfund Division, by EPA Region VII Delegation No. R7-14-14C, dated January 1, 1995.

3. Respondents' participation in this Consent Order shall not constitute or be construed as an admission of liability or of the findings or determinations contained in this Consent Order. Respondents agree to comply with and be bound by the terms of this Consent Order. Respondents consent to and agree not to contest EPA's authority or jurisdiction to issue or to enforce this Consent Order. Respondents further agree not to contest the basis or validity of this Consent Order or any of its terms.

4. EPA has notified the State of Missouri of the issuance of this Consent Order.

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Consent Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or its implementing regulations. Whenever terms listed below are used in this Consent Order or in the documents attached to this Consent Order or incorporated by reference into this Consent Order, the following definitions shall apply:

a. "Action Memorandum" shall mean the removal action decision document for the Site issued by EPA Region VII on February 9, 1999, as set forth in Appendix B to this Order.

b. "Consent Order" shall mean this Administrative Order on Consent for Removal Action and all attachments hereto. In the event of conflict between this Consent Order and any provision of any other agreement, order or writing, the terms and conditions of this Consent Order shall control.

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c. "Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Order, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the end of the next Working day.

d. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300 et seq., as amended.

e. "Oversight Costs" shall mean all direct and indirect costs incurred by EPA in connection with this Consent Order, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs; contractor costs; interagency agreement costs; compliance monitoring including the collection and analysis of split samples, Site visits, discussions regarding disputes that may arise as a result of this Consent Order, review and approval or disapproval of reports and costs of performing any of Work Respondent's tasks; costs incurred by EPA in the process of assisting Work Respondent to

gain access as described in Section VIII (Required Actions); other costs incurred in implementing, overseeing, or enforcing this Consent Order; and enforcement costs.

f. "Owner Respondents" shall mean James and Jayne Bess, Damon and Helen Black, William and Pamela Hart, Robert and Robin House, John McCulloch, Howard and Darla Nichols, Donald Pinkston, and USCOC of Missouri RSA #13, Inc.

g. "Paragraph" shall mean a portion of this Consent Order identified by an Arabic numeral, a letter of the alphabet or a lower case Roman numeral.

h. "Post Removal Site Control" shall mean all measures and actions necessary to ensure the continued effectiveness and integrity of the completed removal action as constructed by Work Respondent and as described in the EPA-approved Removal Action Report.

i. "Parties" shall mean the United States and the Respondents.

j. "RCRA" shall mean the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act and the Hazardous and Solid Waste Amendments, 42 U.S.C. § 6901 et seq.

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k. "Section" shall mean a portion of this Consent Order identified by a Roman numeral and includes one or more paragraphs, unless used to refer to a statutory or regulatory section.

l. "Site" shall mean the Bonne Terre Superfund Site, consisting of abandoned mine chat and mine tailings located near the intersection of Missouri Highway 47 and U.S. Highway 67, in Bonne Terre, Missouri. A detailed description of the areal extent of the Site is set forth in the Action Memorandum, which is Appendix B to this Consent Order.

m. "Statement of Work" or "SOW" shall mean the statement describing the Work to be implemented at the Site, as set forth in Appendix A to this Consent Order, and any and all substitutions, modifications or revisions made to such document, in accordance with this Consent Order.

n. "United States" shall mean the United States of America, and any and all agencies and instrumentalities thereof.

o. "Work Respondent" shall mean the Doe Run Resources Corporation.

IV. STATEMENT OF PURPOSE

6. a. This Consent Order requires the Work Respondent to perform a Removal Action for the eastern portion of the Bonne Terre Site, consistent with the NCP, 40 C.F.R. Part 300, and the "Guidance on Conducting Non-Time Critical Removal Actions under CERCLA," EPA/540-R-93-057, August, 1993, perform post-removal site control actions necessary to maintain the effectiveness of the removal action as constructed by Work Respondent, and reimburse the United States for response costs incurred in connection with the Site. The scope and substance of the Removal Action to be performed by Work Respondent is set forth in Section VIII of this Consent Order, the Statement of Work ("SOW") incorporated herein as Appendix A to this Consent Order, and the Action Memorandum attached to this Order as Appendix B.

b. Owner Respondents' obligations under this Consent Order are limited to those obligations set forth in Section IX (Owner Respondent Obligations) and Section X (Access to Property and Information). Owner Respondents are not obligated under this Consent Order to perform Work or reimburse the United States for response costs.

V. PARTIES BOUND

7. The terms of this Consent Order shall apply to and be binding upon Owner Respondents, and upon Work Respondent and its agents, successors and assigns, and upon all persons, contractors, and consultants acting under or for Work Respondent. The signatories to this Consent Order certify that they are authorized to execute and legally bind the parties they represent to this Consent Order.

8. Any change in the ownership, corporate or partnership status of any Owner Respondent or the Work Respondent, or of property currently owned by any Owner Respondent at the Site, shall not alter any of Owner Respondents' or the Work Respondent's respective responsibilities under this Consent Order. Owner Respondents and Work Respondent shall provide a copy of this Consent Order to any subsequent owners or successors thereof before ownership rights or stock or assets in a corporate acquisition are transferred.

9. Work Respondents shall provide a copy of this Consent Order, within ten (10) working days of the effective date of this Consent Order, to its contractors, subcontractors, laboratories,

consultants, and representatives retained or employed to conduct any Work performed under this Consent Order. Work Respondent shall condition any contracts for Work to be performed under this Consent Order upon satisfactory compliance with this Consent Order. Work Respondent is responsible for ensuring that its contractors, subcontractors, laboratories, consultants, and employees comply with this Consent Order.

VI. EPA FINDINGS OF FACT

10. The Bonne Terre Site is located in St. Francois County, in the southeastern region of the state of Missouri. It is part of what is commonly known as the Old Lead Belt, which was the largest lead producing region in the United States from 1907 to 1953.

11. St Joseph Lead Company founded the Bonne Terre Mine in 1864 and worked the mine until its closure in 1961. An estimated 30 million tons of lead ore was extracted from the mine.

12. During operation of the mine, mining waste from the lead extraction process was disposed of in the area northeast of the mine. Much of this mining waste remains in place today, and

it is this waste, which is described in detail below, which comprises the Bonne Terre Superfund site.

13. One type of mine waste which was disposed of at the Site is known as "tailings", which are medium to fine sand sized particles that were generated as a result of the froth flotation lead extraction process. The tailings are generally of much finer consistency than chat, and are spread across the land surface in fields rather than in piles.

14. A large tailings field is located east of U.S. Highway 67. This tailings field covers approximately 160 acres. Thickness of the tailings varies from a few inches in the southern portion to approximately 50 feet thick in the north end.

15. Analytical results of 36 samples taken from this tailings field in 1983 indicate that the tailings have elevated levels of lead, zinc, and cadmium.

16. Approximately 5 acres of the tailings have vegetative cover; the remaining area is barren, and access is not restricted.

17. The tailings field is contained on the north and east side by an impounding structure constructed of pore rock and

clay. Surface water drainage for the tailings field flows from south to north. A tailings pond is located at the northeast end of this tailings field. The pond is approximately five acres in surface area and ranges from two to four feet deep. A decanting tower located at the north end of the tailings pond controls surface water drainage release for the pond. Excess surface water is routed through the decanting tower to an intermittent creek that flows easterly approximately 5,700 feet to the Big River.

18. Fine sediments in the tailings field deposits are particularly susceptible to blowing during dry periods. During summer months, airborne transport of sediments from the tailings field is often visible.

19. On February 25, 1997, Work Respondent and EPA entered into an Administrative Order on Consent pursuant to CERCLA which provided for performance by Work Respondent, under EPA oversight, of an Engineering Evaluation/Cost Analysis ("EE/CA") for the Site. The purpose of the EE/CA was to identify and evaluate alternatives for removal action to prevent and mitigate releases of hazardous substances from the Site.

20. The EE/CA report prepared by Work Respondent and approved by EPA was released to the public for review and comment on June 29, 1998. A thirty day public comment period was held from June 29, 1998 to July 28, 1998, and EPA held a public meeting on July 7, 1998 to present the findings of the EE/CA and answer questions about the report.

21. In response to public comments, the EE/CA report was revised and re-released to the public for an additional comment period on September 28, 1998.

22. On February 8, 1999, following close of the second public comment period and consideration of all comments, EPA issued an Action Memorandum which selected the removal action to be implemented at the Site. The selected removal action consists of a combination of engineering measures and institutional controls in order to reduce wind and water erosion of mine waste materials from the Site and prevent direct contact by young children with mine waste materials at the Site.

23. Exposure to lead can increase the risk of future adverse health effects such as damage to the central nervous system, peripheral nervous system, and kidney and blood

disorders. Young children are particularly susceptible to adverse health effects due to exposure to lead.

24. Exposure to cadmium can increase the risks of future adverse health effects such as cancer in animals and humans, and tetragenicity, reproductive toxicity, and kidney disorders in humans.

25. Exposure to zinc can increase the risk of acute toxicity in freshwater organisms. Oral ingestion of zinc may cause anemia in humans.

VII. EPA CONCLUSIONS OF LAW AND DETERMINATIONS

26. EPA hereby makes the following conclusions of law and determinations:

a. The Site is a "facility" as defined at Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Lead, zinc, and cadmium are each found at the Site and are each a "hazardous substance" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

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c. The conditions at the Site constitute an actual or threatened release of hazardous substances into the environment at the Site, as defined in Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).

d. Each Respondent is a "person" as defined by and within the meaning of Sections 101(21) and 107(a)(3) of CERCLA, 42 U.S.C. §§ 9601(21) and 9607(a)(3).

e. Each Respondent may be liable under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as a person who is a current owner or operator of the chat pile portion of the Site, or as a person who at the time of disposal of any hazardous substances owned or operated any facility at which such hazardous substances were disposed of.

f. The conditions present at the Site constitute a threat to the public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the NCP, 40 C.F.R. Part 300. These factors include the following:

(1) actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site

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due to the existence of unfenced, unvegetated mine wastes containing high levels of lead, and the continued off-Site transport of contaminants via wind and water erosion.

(2) high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface, that may migrate; this factor is present at the Site due to ongoing wind and water erosion of mine wastes containing high levels of lead.

(3) weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the site due to the existence of wind and rain events.

g. The actual and threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a); and

h. The response actions required by this Order are necessary to protect the public health, welfare, or the environment and are consistent with the NCP and CERCLA.

VIII. WORK TO BE PERFORMED

27. Based on the foregoing Findings of Fact, Conclusions of Law and Determinations, and the Administrative Record for this Site, it is hereby ordered and agreed that Work Respondent shall perform the following actions:

a. Designation of Contractor and Project Coordinator

(1) Work Respondent shall either retain a contractor to perform the removal action required by this Order or perform the removal action itself. Within ten (10) days of the effective date of this Consent Order, Work Respondent shall notify EPA whether it intends to perform the work itself or retain a contractor, and if a contractor is to be retained, shall notify EPA of the name and qualifications of such contractor proposed to be used in carrying out Work. Work Respondent shall also notify EPA of the name and qualifications of any other contractors or subcontractors retained to perform Work under this Consent Order at least ten (10) days prior to commencement of such Work.

(2) Within ten (10) days after the effective date of this Consent Order, Work Respondent shall designate a Project

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Coordinator and shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA. Work Respondent's Project Coordinator shall be responsible for administration of all the actions required of Work Respondent by the Consent Order. Work Respondent's Project Coordinator shall be present at the Site or readily available by telephone during Site Work.

(3) EPA retains the right to disapprove of any, or all, of the contractors or subcontractors selected by Work Respondent, including the Project Coordinator, pursuant to Section XI (Submissions Requiring EPA Approval). If EPA disapproves of a selected contractor, subcontractor, or Project Coordinator, Work Respondent shall retain a different person, and shall notify EPA of that person's name, address, telephone number, and qualifications within fifteen (15) days following EPA's disapproval. Receipt by Work Respondent's Project Coordinator of any notice or communication from EPA relating to this Consent Order shall constitute receipt of the same by Work Respondent.

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(4) EPA has designated Bruce Morrison as its Project Coordinator. Work Respondent shall direct all submissions required by this Consent Order by certified or registered mail to Mr. Morrison at the United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551-7755.

(5) EPA and Work Respondent shall have the right to change their designated Project Coordinators and contractors. Verbal notice of such change shall be provided to the other parties within twenty-four (24) hours of such change and written notice shall follow within five (5) days of such change. Such change by Work Respondent is subject to EPA approval as set forth in Paragraph 26 (a)(3) above and Section XI (Submissions Requiring EPA Approval).

b. Work to be performed

(1) Work Respondent shall perform the removal action for the eastern portion of the Site, as described in the Action Memorandum, and in accordance with the attached Statement of Work ("SOW"), Appendix A.

c. Work Plan and Implementation

(1) Within sixty (60) days of the effective date of this Order, Work Respondent shall submit to EPA for review and approval a Work Plan for performing the removal action for the eastern portion of the Site, in accordance with the attached SOW. The Work Plan shall provide a description of and a detailed schedule for the implementation of the removal action, as described in the SOW and the Action Memorandum. Work Respondent shall consult with and seek input from the Owner Respondents during development of the Work Plan.

(2) EPA may approve, disapprove, or require revisions to the Work Plan in accordance with Section XI of this Consent Order (Submissions Requiring EPA Approval).

(3) Once approved, or approved with modifications, the Work Plan, the schedule contained therein, and any subsequent modifications shall become a part of and shall be fully enforceable under this Consent Order.

(4) Work Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the schedule approved by EPA.

(5) Work Respondent shall notify EPA at least ten (10) working days prior to performing any on-site Work pursuant to the Work Plan approved by EPA.

(6) Work Respondent shall not commence or undertake any Work at the Site without prior EPA approval of the Work Plan.

d. Health and Safety Plan

(1) Simultaneously with submittal of the Work Plan, Work Respondent shall submit to EPA, for review and comment, a plan that also ensures the protection of the public health and safety during performance of the Work required by this Consent Order. This plan shall comply with the specifications in the attached SOW.

(2) Work Respondent shall implement the plan during the performance of the Work required by this Consent Order.

28. Quality Assurance and Sampling

(1) Work Respondent shall include as part of the Work Plan a Quality Assurance Project Plan ("QAPP") for all sampling and monitoring activities to be undertaken as part of

this Consent Order. The QAPP shall be prepared in accordance with the attached SOW. The QAPP shall be subject to EPA approval in accordance with Section XI (Submissions Requiring EPA Approval). All sampling and analyses performed pursuant to this Consent Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures in accordance with the appropriate EPA guidances described in the attached SOW.

(2) Upon request by EPA, Work Respondent shall have the laboratory being used by Work Respondent analyze samples submitted by EPA for quality assurance monitoring.

(3) Upon request by EPA, Work Respondent shall allow EPA or its authorized representatives to take split or duplicate samples of any samples collected by Work Respondent while performing Work pursuant to this Consent Order. Work Respondent shall notify EPA not less than ten (10) days in advance of any sample collection activity. EPA shall have the right to take any additional samples that it deems necessary.

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(4) Work Respondent shall ensure that any laboratory used by Work Respondent for analyses, performs according to a method or methods consistent with the EPA Contract Laboratory Program("CLP") and submits all protocols to be used for analyses to EPA at least ten (10) days before beginning analyses.

(5) Work Respondent shall submit to EPA, within twenty (20) days of receipt by Respondent, all analytical data collected in connection with this Consent Order.

29. Reports and Meetings

a. Progress Reports: Work Respondent shall submit a quarterly written progress report to EPA concerning activities undertaken pursuant to this Consent Order, commencing ninety (90) days from the effective date of this Consent Order, until this Consent Order is terminated or unless otherwise directed by EPA. These reports shall describe all significant developments during the preceding period; work performed and problems encountered; the actual Work performed, any problems encountered in completing this Work; the developments anticipated and the work scheduled during the next reporting period, including a schedule of

completion for the unfinished Work from the preceding period and Work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Removal Action Report: Within 45 days after completion of construction of the removal action in accordance with the approved Work Plan, Work Respondent shall submit for EPA review and approval a Removal Action Report, prepared in accordance with the requirements of this Consent Order and the SOW.

c. Meetings. Work Respondent shall make presentations at, and participate in, meetings at the request of EPA during the planning for and conduct of the removal action, as is necessary in order to provide the community with information and opportunity for input.

30. Post-Removal Site Control. Work Respondent shall provide for all post-removal Site control necessary to maintain the long-term effectiveness and protectiveness of the completed removal action as constructed by Work Respondent and as described in the EPA-approved Removal Action Report. At the same time that Work Respondent submits the Removal Action Report, Work

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Respondent shall submit for EPA review and approval a Post-Removal Site Control Plan. This plan shall describe the activities that Work Respondent shall perform in order to maintain the effectiveness and integrity of the removal action. . Work Respondent shall implement the Post-Removal Site Control Plan, as approved by EPA. Work Respondent shall not be responsible under this Consent Order for Post-Removal Site Control for any portion of the Site where EPA has approved pursuant to paragraph 43 herein either a change in use of property at the Site or any other activity that involves disturbance of the cover established by Work Respondent as part of construction of the removal action.

IX. Owner Respondents' Obligations

31. Owner Respondents recognize and acknowledge that performance of the removal action will involve major construction activity on property owned by Owner Respondents, including regrading of property and movement of mine waste materials onto and off of Owner Respondents' properties. Owner Respondents agree to cooperate with EPA and Work Respondent during performance of the removal action by providing access as provided

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in Section X below, and agree to refrain from using property at the Site while construction is ongoing in any manner that would interfere with or adversely affect the integrity of the removal action.

32. Owner Respondents agree that Work Respondent and EPA may move or remove mine waste materials from Owner Respondents' property as is necessary to perform the removal action required by this Consent Order.

33. Owner Respondents agree not to use property at the Site which contains mine wastes for any purpose that could reasonably be expected to attract children for significant periods of time, including, but not limited to, schools, child care facilities, playgrounds, parks, and picnic grounds. Owner Respondents further agree not to use the property for residential purposes, except for existing residences, or future residences where children will not reside, such as senior citizen housing or nursing homes. EPA agrees and acknowledges that existing industrial or commercial uses of the property at the Site by the Owner Respondents, as described specifically in paragraphs 34 to 41 herein, are compatible with the removal action and are acceptable uses of the

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property. Future uses of the property for industrial or commercial purposes would be acceptable and compatible with the removal action, provided that the Owner Respondent obtains prior EPA approval for any change in use of the property pursuant to paragraph 43 herein.

34. USCOC of Missouri RSA #13, Inc. owns approximately 20 acres of property at the Site that is covered with mine waste materials. A cellular phone tower is located on the property. The mine waste materials will be regraded, covered and revegetated as part of this removal action. Within 60 days of the effective date of this Order, USCOC of Missouri RSA #13, Inc. shall record with the St. Francois County Recorder of Deeds the restrictive covenants for its property which are attached to this Order as Appendix C. Within thirty days of recording the restrictive covenants, USCOC of Missouri RSA #13 shall submit to EPA a copy of the restrictive covenant as recorded.

35. William and Pamela Hart own approximately 4.8 acres of property at the Site that is covered with mine waste materials. The property is currently undeveloped, although on a periodic basis, mine waste materials from the property are excavated and

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sold for agricultural use. The mine waste materials will be regraded, covered and revegetated as part of this removal action. The Harts agree to discontinue excavation of mine waste on their property at the Site once Work Respondent has commenced construction at the Site. Within 60 days of the effective date of this Order, the Harts shall record with the St. Francois County Recorder of Deeds the restrictive covenants for their property which are attached to this Order as Appendix D. Within thirty days of recording the restrictive covenants, the Harts shall submit to EPA a copy of the restrictive covenant as recorded.

36. Donald Pinkston owns approximately 11 acres of property at the Site that is covered with mine waste materials. The property is currently undeveloped and is used for recreation purposes. The mine waste materials will be regraded, covered and revegetated as needed as part of this removal action. Only those portions of Mr. Pinkston's property containing mine wastes following completion of construction of the removal action shall be subject to use restrictions and restrictive covenants. Within 120 days of Work Respondent's completion of construction on the

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Pinkston's property, the Work Respondent shall obtain a survey of Mr. Pinkston's property which describes and defines the portion which contains mine wastes, and submit to EPA for review and approval the restrictive covenants attached to this Order as Appendix E. Within 30 days of EPA approval of the restrictive covenants, Mr. Pinkston shall record with the St. Francois County Recorder of Deeds the restrictive covenants for his property. Within thirty days of recording the restrictive covenants, Mr. Pinkston shall submit to EPA a copy of the restrictive covenant as recorded.

37. James and Jayne Bess own several parcels of property at the Site that are covered with mine waste materials. The property is currently undeveloped. The mine waste materials will be regraded, covered and revegetated as part of this removal action. Within 60 days of the effective date of this Order, the Besses shall record with the St. Francois County Recorder of Deeds the restrictive covenants for their property which are attached to this Order as Appendix F. Within thirty days of recording the restrictive covenants, the Besses shall submit to EPA a copy of the restrictive covenant as recorded.

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38. Howard and Darla Nichols own approximately 18 acres of property at the Site that is partially covered with mine waste materials. The portion of the property which contains mine wastes is currently undeveloped. A residence is located on the portion of the property that does not contain mine wastes. The mine waste materials will be regraded, covered and revegetated as part of this removal action. Pond and marsh areas at the North end of the tailings flat will not be filled in with tailings or soil. The Nichols may select the seed mix of their choice to vegetate or re-vegetate areas of their property. Within 60 days of the effective date of this Order, the Nichols shall record with the St. Francois County Recorder of Deeds the restrictive covenants for their property which are attached to this Order as Appendix G. Within thirty days of recording the restrictive covenants, the Nichols shall submit to EPA a copy of the restrictive covenant as recorded.

39. John McCulloch owns approximately 40 acres of property at the Site, a portion of which is covered with mine waste materials. A residence is located on a portion of the property that does not contain mine wastes. Another portion of the property, some of which contains mine wastes, is used for

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motorized vehicle racing on a seasonal basis. Areas of the property essential for the existing racing activity will not be covered and revegetated, and racing activity may continue. Mr. McCulloch agrees to make reasonable efforts to suppress dust at the property through watering and other dust suppression methods. Within 60 days of the effective date of this Order, Mr. McCulloch shall record with the St. Francois County Recorder of Deeds the restrictive covenants for his property which are attached to this Order as Appendix H. Within thirty days of recording the restrictive covenants, Mr. McCulloch shall submit to EPA a copy of the restrictive covenant as recorded.

40. Damon and Helen Black own property at the Site that is partially covered with mine waste materials. Portions of this property are undeveloped, and portions are being developed for commercial or industrial use. The mine waste materials will be regraded, covered and revegetated as part of this removal action, as shown on the design drawing attached to this Order as Appendix K. Within 60 days of the effective date of this Order, the Blacks shall record with the St. Francois County Recorder of Deeds the restrictive covenants for their property which are

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attached to this Order as Appendix I. Within thirty days of recording the restrictive covenants, the Blacks shall submit to EPA a copy of the restrictive covenant as recorded.

41. Robert and Robin House own approximately 50 acres of property at the Site that are partially covered with mine waste materials. Two residences are currently located on a portion of the property that does not contain mine wastes. As part of this removal action, the mine waste materials will be regraded, covered and revegetated, and a dam will be constructed on a portion of the House's property, as shown in the drawing attached to this Order as Appendix K. The final elevation of the dam north of the emergency spillway will be 805 feet and the backside slopes of the dam will not exceed slopes of 3 horizontal to 1 vertical ratios. Soil taken from the portion of the dam located on the House's property will only be used as soil cover on property owned by the House's. The north face of the north end of the dam will be covered with clay soil and seeded with fescue grass. The final grade of the top of the dam will be covered with clay soil and seeded with fescue grass. Any excess clay from the regrading of the dam will be used as cover for the

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upper, back side of the east dam and seeded with fescue grass. Soil covered portions of the dam shall be maintained to prevent surface erosion and tree growth. Any damage to property owned by the House's as a result of removal construction by Work Respondent shall be repaired by Work Respondent. Only those portions of the House's property containing mine wastes following completion of construction of the removal action shall be subject to use restrictions and restrictive covenants. Within 120 days of Work Respondent's completion of construction on the House's property, the Work Respondent shall obtain a survey of the House's property which describes and defines the portion which contains mine wastes, and submit to EPA for review and approval the restrictive covenants attached to this Order as Appendix J. Within 30 days of EPA approval of the restrictive covenants, the Houses shall record with the St. Francois County Recorder of Deeds the restrictive covenants for their property. Within thirty days of recording the restrictive covenants, the Houses shall submit to EPA a copy of the restrictive covenant as recorded.

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42. Owner Respondents acknowledge that the mine wastes on their property at the Site will be covered as part of the removal action in order to prevent erosion of the mine waste materials and prevent exposure to the mine waste materials, and agree not to conduct any excavation, drilling, or other similar intrusive activity which would disturb or otherwise interfere with the cover to be established and maintained at the Site, except as provided in paragraph 43 below.

43. If any Owner Respondent wishes to change the use of property at the Site which contains mine wastes, or wishes to conduct excavation, drilling, or other intrusive activity that would disturb or otherwise interfere with the cover at the Site, such Owner Respondent shall submit a written request to EPA seeking approval of such activity. The written request shall describe in detail the activity the Owner Respondent wishes to conduct, the procedures the Owner Respondent will follow to ensure that human health and the environment are adequately protected during and after the activity, and the actions Respondent will take to ensure that all mine waste is properly covered and the cover maintained following completion of any

activity which disturbs the cover. EPA shall review the request and either approve it, disapprove it, or require that the Owner Respondent resubmit the request with revisions and/or additional details. EPA shall notify Work Respondent of any such request prior to responding to the request.

44. Owner Respondents shall, prior to conveyance of any interest in property at the Site, give written notice to the transferee that the property is subject to this Order. Owner Respondents agree to condition any transfers of Site property upon the transferee's consent in writing to be bound by the terms of this Order.

X. ACCESS TO PROPERTY AND INFORMATION

45. Owner Respondents shall provide EPA and its representatives and contractors, and Work Respondent and its representatives and contractors, with access to the Site necessary for conducting or overseeing activities pursuant to this Consent Order. These individuals shall be permitted to move freely about the Site in order to conduct all actions which EPA determines to be necessary. Such unrestricted access shall continue until such time as EPA has granted notice of completion

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as set forth in Section XXVII (Notice of Completion of this Consent Order).

46. If Work Respondent needs access to any property not owned by Owner Respondents in order to conduct the activities required by this Order, Work Respondent shall use best efforts to obtain access to such properties and shall provide such access to EPA. Such access to property shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and state of Missouri representatives. These individuals shall be permitted to move freely at the Site and appropriate off-site areas in order to conduct actions which EPA determines to be necessary. Such unrestricted access shall continue until such time as EPA has granted notice of completion as set forth in Section XXVIII (Notice of Completion of this Consent Order).

47. Work Respondent shall notify EPA of the need for access to properties not owned by Owner Respondents within ten days of identifying such need, and shall obtain all necessary access agreements within sixty (60) days of identifying such need, or as otherwise specified in writing by EPA's Project Coordinator. Work Respondent shall immediately notify EPA if, after using its

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best efforts, it is unable to obtain such agreements. As used in this Section, "best efforts" shall include an initial visit, a follow-up telephone call and a certified letter from Work Respondent to the present owner of the property, requesting an access agreement to permit Work Respondent and EPA, including its authorized representatives, access to the property to conduct the activities required under this Consent Order. In Work Respondent's notification to EPA of failure to obtain access, Work Respondent shall describe and document in writing its efforts to obtain access. EPA may then assist Work Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as EPA deems appropriate, including exercising its authority pursuant to Section 104(e) of CERCLA, 42 U.S.C. 9604(e). All costs and attorney's fees incurred by the United States in obtaining access shall be reimbursed by Work Respondent subject to Section XVIII (Reimbursement of Costs).

48. Work Respondent shall also provide EPA access to all records and documentation related to the conditions at the Site and the activities conducted pursuant to this Consent Order.

Such access to information shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and state of Missouri representatives.

XI. SUBMISSIONS REQUIRING EPA APPROVAL

49. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Order, EPA shall: (a) approve, in whole or in part, the submission; (b) approve the submission with modifications; (c) disapprove, in whole or in part, the submission, directing the Work Respondent to resubmit the document after incorporating EPA's comments; (d) disapprove the submission and assume responsibility for performing all or any part of the response activities; or (e) any combination of the above.

50. In the event of approval or approval with modifications by EPA, pursuant to Paragraph 49, Work Respondent shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA.

51. Upon receipt of a notice of disapproval pursuant to Paragraph 49, Work Respondent shall, within twenty (20) working days or such other time as specified by EPA in such notice,

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correct the deficiencies and resubmit the plan, report, or other item for approval.

52. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 49, Work Respondent shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Work Respondent of any liability for stipulated penalties under Section XXI (Stipulated Penalties).

53. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved or modified by EPA due to a material defect, Work Respondent shall be deemed to have failed to submit such plan, report, or other item in a timely and adequate manner, unless Work Respondent invokes the procedures of Section XIX (Dispute Resolution), and EPA's action is overturned pursuant to the Section.

54. The provisions of Section XIX (Dispute Resolution) and Section XXI (Stipulated Penalties) shall govern the implementation of the Work, and accrual and payment of any stipulated penalties during dispute resolution. If EPA's

disapproval is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was required, as provided in Section XXI (Stipulated Penalties).

55. All plans, reports and other items required to be submitted to EPA under this Consent Order shall, upon approval by EPA, be enforceable under this Consent Order. In the event EPA approves a portion of a plan, report or other item required to be submitted to EPA under this Consent Order, the approved portion shall be enforceable under this Consent Order.

XII. RECORD RETENTION, DOCUMENTATION,
AND AVAILABILITY OF INFORMATION

56. Work Respondent shall preserve all documents and information relating to Work performed under this Consent Order, or relating to the hazardous substances found on or released from the Site, for three (3) years following completion of the Work required by this Consent Order. If, during such three year period, EPA shall request, in writing, a review of, or copies of, any such documentation or information, Work Respondent shall provide the original or copies of such documents or information to EPA within fifteen (15) working days. At the end of this

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three year period and thirty (30) days before any document or information is destroyed, Work Respondent shall notify EPA that such documents and information are available to EPA for inspection, and upon request, shall provide the original or true and accurate copies of such documents and information to EPA.

57. Work Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information it submits to EPA pursuant to this Consent Order, provided such claim is allowed by Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in Section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Work Respondent. EPA shall disclose information covered by a business confidentiality claim only to the extent permitted by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Work Respondent. EPA may, at any time, challenge claims of privilege through negotiations or otherwise as provided by law or the Federal Rules of Civil Procedure.

XIII. OFF-SITE SHIPMENTS

58. Any hazardous substances, pollutants or contaminants removed off-site pursuant to this Consent Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with the EPA Off-Site Rule, 40 C.F.R. § 300.440, promulgated pursuant to 42 U.S.C. § 9621(d)(3).

XIV. COMPLIANCE WITH OTHER LAWS

59. All actions required pursuant to this Consent Order shall be performed in accordance with all applicable local, state, and federal laws and regulations except as provided in CERCLA Section 121(e), 42 U.S.C. § 9621, and 40 C.F.R. § 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all Work required pursuant to this Consent Order shall, to the extent practicable, as determined by EPA, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental, state environmental, or facility siting laws. All ARARs shall be identified in the Work Plan. The Work Plan shall

also describe for each identified ARAR the measures to be taken to ensure compliance with the ARAR.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

60. If any incident, or change in Site conditions, during the activities conducted pursuant to this Consent Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, Work Respondent shall immediately take all appropriate action, in accordance with all applicable provisions of this Order, to abate or minimize such release or endangerment caused or threatened by the release. Work Respondent shall also immediately notify EPA's Project Coordinator, or, in the event of his unavailability, shall notify the Regional Duty Officer, Emergency Planning and Response Branch, EPA Region VII, (913) 236-3778, of the incident or Site conditions. Work Respondent shall submit a written report to EPA within seven (7) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release.

61. In addition, in the event of any release of a hazardous substance above a reportable quantity from the Site, Work Respondent shall immediately notify the National Response Center at (800) 424-8802 and EPA's Project Coordinator at (913) 551-7728.

62. These requirements are in addition to the requirements set forth in the Emergency Planning and Community Right-to-know Act ("EPCRA"), 42 U.S.C. § 11001 et seq.

XVI. AUTHORITY OF EPA'S PROJECT COORDINATOR

63. EPA's Project Coordinator shall be responsible for overseeing the implementation of this Consent Order. EPA's Project Coordinator shall have the authority vested in a Remedial Project Manager ("RPM") and an On-Scene Coordinator ("OSC") by the NCP, including the authority to halt, conduct, or direct any Work required by this Consent Order, or to direct any other response action undertaken by EPA or Work Respondent at the Site. Absence of EPA's Project Coordinator from the Site shall not be cause for stoppage of Work unless specifically directed by EPA's Project Coordinator.

XVII. ADDITIONAL WORK

64. EPA may determine that sampling, analysis, or reporting, or other tasks in addition to those specifically set forth in the attached SOW or this Consent Order are necessary to satisfy the purposes of this Consent Order. If EPA so determines, it will advise Work Respondent in writing of the nature of the additional tasks and the basis for EPA's determination that the additional work is necessary. Work Respondent may request a meeting with EPA to discuss the additional work within seven (7) days of their receipt of EPA's written determination. Within ten (10) days of receipt of EPA's written determination, Work Respondent shall advise EPA in writing of either their agreement to perform the additional tasks requested, or their refusal to undertake the additional tasks and the reasons for such refusal.

65. If Work Respondent refuses to undertake the additional work, Work Respondent shall initiate the dispute resolution process set forth in Section XIX of this Order. The time period for initiation of dispute resolution, as set forth in paragraph 73 hereof, shall run from the date Work Respondent receives

written notice from EPA of its determination that additional work is necessary to satisfy the purpose of this Order.

66. If Work Respondent agrees to perform the additional tasks requested, within the time specified in the determination from EPA, Work Respondent shall submit a Supplemental Work Plan which shall be subject to EPA's approval as set forth in Section XI (Submissions Requiring EPA Approval). Upon approval of the Supplemental Work Plan by EPA, Work Respondent shall implement the Supplemental Work Plan. The Supplemental Work Plan shall address the affect of the additional Work on each part of the approved initial Work Plan.

67. All additional Work performed by Work Respondent under this Section shall be performed in a manner consistent with this Consent Order.

XVIII. REIMBURSEMENT OF RESPONSE COSTS

68. Work Respondent shall reimburse the United States for all oversight costs incurred by the United States prior to EPA approval of the Removal Action Report, not inconsistent with the NCP, and incurred by the United States in relation to the Work to be performed pursuant to this Consent Order. On a periodic

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basis, EPA shall submit to Work Respondent a bill for oversight costs. Work Respondents shall, within thirty (30) days of receipt of a billing for oversight costs from EPA, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substances Superfund", to the following address:

Mellon Bank
Attn: Superfund Accounting
EPA Region VII
(Comptroller Branch)
P.O. Box 360748M
Pittsburgh, PA 15251

Work Respondent shall simultaneously transmit a copy of the check, as well as any transmittal letter to Bruce Morrison, EPA's Project Coordinator, EPA Region VII, 901 N. 5th Street, Kansas City Kansas 66101. Payments shall be designated as "oversight costs - Bonne Terre Superfund Site" and shall reference the payor's name and address, the EPA Site identification number ("WD"), and the docket number of this Consent Order.

69. In the event that Work Respondent does not make full payment for oversight costs within thirty days of Work Respondent's receipt of a bill from EPA, Work Respondent shall pay interest on the unpaid balance. Interest, at a rate

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established pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607; and in 4 C.F.R. § 102.13, shall accrue on the unpaid balance of any costs for which EPA has billed Work Respondent, commencing on the thirty-first day after Work Respondent's receipt of the billing for the same, notwithstanding any dispute or objection to any portion of the costs.

70. Work Respondent may dispute, in accordance with Section XIX (Dispute Resolution), all or part of a bill submitted under this Consent Order. Any such dispute shall be limited to accounting errors or inconsistencies with the NCP.

71. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Work Respondent, on or before the due date, shall pay (a) the full amount of the uncontested costs into the Hazardous Substances Superfund account specified in paragraph 68, above, and (b) the full amount of all contested costs into an interest bearing escrow bank account established by Work Respondent. Work Respondent shall simultaneously transmit a copy of each check to EPA's Project Coordinator. Work Respondent shall ensure that the prevailing

party in the dispute shall receive the amount upon which they prevailed from the escrowed funds, with interest, within ten (10) days after the dispute is resolved.

XIX. DISPUTE RESOLUTION

72. If Work Respondent or any Owner Respondent disagrees, in whole or in part, with any EPA disapproval or other decision or directive made by EPA pursuant to this Consent Order, they shall notify EPA in writing of their objections and the bases for such objections, within ten (10) working days of receipt of EPA's disapproval, decision, or directive. Such notice shall set forth the specific points of the dispute, the position the Work Respondent or Owner Respondent maintains should be adopted as consistent with the requirements of this Consent Order, the factual and legal bases for the Work Respondent or Owner Respondent's position, and all matters Respondent considers necessary for EPA's determination. EPA and the Work Respondent or Owner Respondent shall then have ten (10) working days from EPA's receipt of the Work Respondent or Owner Respondent's

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objections to attempt to resolve the dispute. If agreement is reached, the resolution shall be reduced to writing, signed by each party, and incorporated into this Consent Order. If the parties are unable to reach agreement within this ten (10) working-day period, the matter shall be referred to the Superfund Division Director. The Superfund Division Director shall then decide the matter and provide a written statement of his or her decision to both parties, which shall be incorporated into this Consent Order.

73. The invocation of the dispute resolution process under this Section, or a claim of force majeure, shall not stay the accrual of stipulated penalties, or extend or postpone any deadline or obligations of the Work Respondent or Owner Respondent, including the obligation to pay stipulated penalties, under this Consent Order with respect to the disputed issue, unless EPA otherwise agrees in writing. Stipulated penalties shall accrue from the first day of non-compliance by the Work Respondent or an Owner Respondent, and shall continue to accrue during dispute resolution procedures until twenty (20) days after the Work Respondent or an Owner Respondent requests a

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determination by the Superfund Division Director pursuant to Paragraph 72 herein, after which date stipulated penalties shall stop accruing until issuance by the Superfund Division Director of a decision resolving the dispute. Stipulated penalties shall continue to accrue during the dispute resolution process for all matters unrelated to the contested matters at issue in the dispute resolution process.

74. Notwithstanding any other provision of this Consent Order, no action or decision by EPA, including without limitation, decisions of the Superfund Division Director pursuant to this Consent Order, shall constitute final EPA action giving rise to any rights to judicial review prior to EPA's initiation of judicial action to compel the Work Respondent's or an Owner Respondent's compliance with the requirements of this Consent Order.

75. No stipulated penalties shall accrue during invocation or implementation of the procedures set forth in this Section XIX (Dispute Resolution) with respect to disputes involving the need for or extent of Additional Work pursuant to Section XVII of this Consent Order.

XX. FORCE MAJEURE

76. Work Respondent and the Owner Respondents agree to perform all their respective requirements of this Consent Order within the time limits established by this Consent Order, unless the performance is prevented or delayed by events which constitute a force majeure. For purposes of this Consent Order, a force majeure is defined as any event arising from causes not foreseeable and beyond control of an Owner Respondent, or the Work Respondent or its consultants, contractors, subcontractors or agents, that delays or prevents performance in accordance with the schedule required by this Consent Order, despite the Work Respondent or Owner Respondent's best efforts to meet the schedule. A force majeure event for Work Respondent may include a failure by an Owner Respondent to comply with the access provisions in Sections IX and X of this Consent Order. Force majeure does not include financial inability to complete the Work, unanticipated or increased costs of performance, normal precipitation events, changed economic circumstances or failure to obtain federal, state or local permits.

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77. Work Respondent or an Owner Respondent shall immediately notify EPA orally, and shall also notify EPA in writing within five (5) days after they become aware of events that constitute a force majeure. Such notice shall: Identify the event causing the delay or anticipated delay; provide an estimate of the anticipated length of delay, including necessary demobilization and remobilization; state a description of the cause of the delay; state the measures taken or to be taken to minimize delay; and state the estimated timetable for implementation of these measures. Such notice shall be reviewed by EPA and EPA will determine whether delay has been or will be caused by a force majeure.

78. Work Respondent and Owner Respondents shall exercise best efforts to avoid and minimize any delay caused by a force majeure, as defined herein. Failure to comply with the notice provision of this Section shall constitute a waiver of Work Respondent or any Owner Respondent's right to assert force majeure.

79. If EPA determines that a delay in performance of a requirement under this Consent Order has been or will be caused

by a force majeure, the time period for performance of that portion of Work affected may be extended for a period of time equal to the delay resulting from such circumstances. This schedule extension shall be accomplished through written modification of the Work Plan pursuant to Section XXVI (Modifications). Such an extension does not alter the schedule for performance or completion of other tasks required by the attached SOW or Work Plan unless these are also specifically altered by approval of EPA. In the event EPA and the Work Respondent or an Owner Respondent cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, such dispute shall be resolved in accordance with the provisions of Section XIX (Dispute Resolution).

XXI. STIPULATED PENALTIES

80. The stipulated penalties set forth below in Paragraphs 82.a, 82.b, 82.c, and 82.d shall be assessed against Work Respondent at any time Work Respondent fails to timely and adequately comply with any requirement of this Consent Order, unless a force majeure has occurred, as defined in Section XX

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(Force Majeure) and EPA has approved the extension of a deadline as required by Section XX (Force Majeure). Compliance by Work Respondent with this Consent Order shall include completion of an activity under this Consent Order or a plan approved under this Consent Order in a manner acceptable to EPA, and within the specified time schedules in and approved under this Consent Order.

81. The stipulated penalties set forth below in Paragraph 82.d shall be assessed against an Owner Respondent at any time an Owner Respondent fails to comply with any of its obligations under this Order.

82. The stipulated penalties for violations relating to this Consent Order shall accrue as follows:

a. For failure to submit a timely and adequate Work Plan, as required in Section VIII (Work to be Performed) above:

(1) \$500 per day for the first through seventh days of noncompliance;

(2) \$1,000 per day for the eighth through the thirtieth days of noncompliance; and

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(3) \$2,000 per day for the thirty-first day and each succeeding day of noncompliance thereafter.

b. For failure to submit in a timely and adequate manner the Removal Action Report or Post-Removal Site Control Plan Work Plan, as required in Section VIII (Work to be Performed) above:

(1) \$250 per day for the first through seventh days of no compliance;

(2) \$500 per day for the eighth through the thirtieth days of noncompliance and;

(3) \$1,000 per day for the thirty-first day and each succeeding day of noncompliance thereafter.

c. For failure to submit monthly progress reports as required in Section VIII (Work to be Performed) above, within the time period required by this Consent Order and the SOW:

(1) \$100 per day for the first through seventh days of noncompliance;

(2) \$200 per day for the eighth through the thirtieth days of noncompliance and;

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(3) \$300 per day for the thirty-first day and each succeeding day of noncompliance thereafter.

d. For any other violation of this Order, other than failure to submit timely and adequate deliverables as specified in paragraphs 82.a, 82.b, and 82.c above:

(1) \$250 per day for the first through seventh days of noncompliance;

(2) \$500 per day for the eighth through the thirtieth days of noncompliance and;

(3) \$1,000 per day for the thirty-first day and each succeeding day of noncompliance thereafter.

83. All penalties shall begin to accrue on the date that complete performance is due or a violation or non-compliance occurs and shall continue to accrue through the final day of correction of the noncompliance. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Order.

84. All penalties owing under this Section shall be due within thirty (30) days of receipt by Work Respondent or an Owner Respondent of written demand by EPA for payment thereof.

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Interest shall begin to accrue on the unpaid balance at the end of this thirty (30) day period. Interest will accrue on the unpaid balance until such penalties and interest have been paid in full and will be compounded annually.

85. All penalties shall be paid by certified or cashier's check made payable to the Treasurer of the United States, and shall be remitted to:

Mellon Bank
Attn: Superfund Accounting
EPA Region VII
(Comptroller Branch)
P.O. Box 360748M
Pittsburgh, PA 15251

All payments shall reference the EPA Docket Number which appears on the face of this Consent Order and the Site name and identification number ("WD"), and shall indicate that they are in payment of stipulated penalties. A copy of the transmittal of payment shall be sent to EPA's Project Coordinator.

86. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Work Respondent's or an Owner Respondent's failure to comply with any of the requirements of this Consent Order, nor shall payment of said

penalties relieve Work Respondent or Owner Respondents of the responsibility to comply with this Consent Order.

XXII. RESERVATION OF RIGHTS

87. EPA hereby expressly reserves all rights and defenses that it may have, including, but not limited to, its rights to disapprove of Work performed by Work Respondent and to perform all or part of the Work required hereunder itself; and to require that Work Respondent or Owner Respondents perform tasks in addition to those stated in this Consent Order, the attached SOW or the Work Plan.

88. EPA hereby expressly reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including without limitation: (1) the issuance of an order to require further response action as determined necessary by EPA, (2) bringing an action seeking the assessment of penalties under Section 106(b) of CERCLA, 42 U.S.C. § 9606(b), (3) bringing an action to recover costs under Section 107 of CERCLA, 42 U.S.C. § 9607; (4) bringing an action against Respondents to collect stipulated penalties, if any, assessed pursuant to Section XXI, (Stipulated Penalties), of this Consent

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Order; and/or to seek penalties pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and (5) seeking injunctive relief, monetary penalties and punitive damages for any violation of law or of this Consent Order.

89. Except as expressly provided in Section XXIII (Covenant Not to Sue), this Consent Order shall not be construed as a release, waiver or limitation of any rights, remedies, powers and/or authorities, civil or criminal, that EPA has under CERCLA, the Resource Conservation and Recovery Act (RCRA), or any other statutory, regulatory or common law authority of the United States.

90. Compliance by Work Respondent and Owner Respondents with the terms of this Consent Order shall not relieve Work Respondent and Owner Respondents of their obligations to comply with CERCLA, RCRA or any other applicable local, state or federal laws and regulations.

91. This Consent Order shall not limit or otherwise preclude the EPA from taking, directing or ordering any additional enforcement actions pursuant to CERCLA, RCRA or any other available legal authorities should EPA determine that such

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actions are necessary to protect public health, welfare or the environment or to prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at or from the Site.

92. EPA hereby expressly reserves any right it may have to perform any Work required to be performed hereunder by Work Respondent, including, but not limited to, response actions as it deems necessary to protect public health or the environment. EPA may exercise any authority it may have under CERCLA to undertake removal actions or remedial actions at any time.

93. If EPA determines that Work in compliance or noncompliance with this Consent Order has caused or may cause a release of hazardous substances or hazardous constituents or a threat to human health or the environment or that Work Respondent is not capable of undertaking any of the Work required hereunder, EPA reserves the right to order Work Respondent to stop further implementation of this Consent Order for such period of time as EPA determines may be needed to abate any such release or threat

or to undertake any action that EPA determines is necessary to abate such release or threat.

XXIII. COVENANT NOT TO SUE

94. Except as otherwise specifically provided in this Order, upon issuance of the EPA notice referred to in Section XXV (Effective Date and Termination), EPA covenants not to sue Work Respondent and Owner Respondents for judicial imposition of damages or civil penalties or to take administrative action against Work Respondent and Owner Respondents for any failure to perform removal actions agreed to in this Order except as otherwise reserved herein.

95. Except as otherwise specifically provided in this Order, in consideration and upon Work Respondents' payment of the response costs specified in Section VIII of this Order, EPA covenants not to sue or to take administrative action against Work Respondent and Owner Respondents under Section 107(a) of CERCLA for recovery of oversight costs incurred by the United States in connection with this removal action or this Order. This covenant not to sue shall take effect upon the receipt by

EPA of the payments required by Section VIII (Reimbursement of Costs).

96. These covenants not to sue are conditioned upon the complete and satisfactory performance by Work Respondent and Owner Respondents of their obligations under this Order. These covenants not to sue extend only to the Work Respondent and Owner Respondents and do not extend to any other person.

XXIV. OTHER CLAIMS

97. By issuance of this Consent Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Work Respondents. Neither the United States nor EPA shall be a party or be held out as a party to any contract entered into by the Work Respondent or its agents, successors, representatives, contractors, or assigns in carrying out activities pursuant to this Consent Order. Neither the Work Respondent nor its agents, successors, representatives, contractors, or assigns shall be considered an agent of the United States.

98. Nothing in this Consent Order constitutes a satisfaction of or release from any claim or cause of action

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against the Work Respondent or Owner Respondents or any person not a party to this Consent Order, for any liability such person may have under CERCLA, RCRA or other statutes, or the common law, including, but not limited to, any claims of the United States for costs, damages and interest under Sections 104 and 107(a) of CERCLA, 42 U.S.C. §§ 9604 and 9607(a).

99. This Consent Order does not constitute a preauthorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). The Work Respondent and Owner Respondents agree not to sue the United States for, and waive any claim to payment under Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against the United States or the Hazardous Substances Superfund arising out of any activity performed under this Consent Order.

100. No action or decision by EPA pursuant to this Consent Order shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXV. CONTRIBUTION

101. With regard to claims for contribution against Work Respondent and Owner Respondents for matters addressed in this

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Consent Order, the parties hereto agree that Work Respondent and each Owner Respondent is entitled to protection from such contribution actions or claims to the extent provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2).

102. Nothing in this Consent Order precludes the United States or Work Respondent or any Owner Respondent from asserting any claims, causes of action or demands against any persons who are not parties to this Consent Order for indemnification, contribution, or cost recovery.

103. Work Respondent and Owner Respondents agree that with respect to any suit or claim for contribution brought against them for matters covered by this Consent Order, Respondents will notify EPA of the institution of the suit or claim within thirty (30) days of service of any such suit or claim.

XXVI. INDEMNIFICATION

104. Work Respondent agrees to indemnify, save and hold harmless the United States, its officials, agents, contractors, and employees from any and all claims or causes of action arising from, or on account of, negligent or wrongful acts or omissions of Work Respondent, its officers, employees, contractors,

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subcontractors, receivers, trustees, agents, successors or assigns, in carrying out activities pursuant to this Consent Order, including, but not limited to, claims arising from construction delays.

105. Work Respondent agrees to pay the United States all costs the United States incurs, including, but not limited to, attorney's fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or wrongful acts or omissions of Work Respondent, or any of its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Order.

106. At least seven (7) days prior to commencing any on-site work under this Order, Work Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit. Within the same time period, the Work Respondent shall provide EPA with certificates of such insurance and a copy of each insurance

policy. If the Work Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then the Work Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVII. MODIFICATIONS

107. This Consent Order may be modified by mutual agreement of the Work Respondent, Owner Respondents, and EPA. Except as provided in paragraph 108 below, any such amendment shall be in writing and shall be signed by an authorized representative of Work Respondent, each Owner Respondent, and EPA. Unless otherwise provided for in the amendment, the effective date of any such modification shall be the date on which the written agreement or modification is signed by EPA after signature by the Respondent. All modifications shall be incorporated into and become a part of this Consent Order.

108. The Statement of Work, the EE/CA Work Plan, and the schedule for deliverables under this Consent Order may be

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modified by mutual written consent of the Project Coordinators for EPA and Work Respondent.

109. No informal advice, guidance, suggestion or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Work Respondent shall relieve the Work Respondent of its obligation to obtain such formal approval as may be required by this Consent Order, and to comply with all requirements of this Consent Order unless or until this Consent Order may be formally modified.

XXVIII. NOTICE OF COMPLETION

110. When EPA determines, after EPA's review of the Final Removal Action Report, that the removal action has been fully performed in accordance with this Consent Order, except for post-removal site control and certain continuing obligations required by this Consent Order (e.g., land use restrictions, record retention, etc.), and that all goals and objectives of this Consent Order and the SOW have been satisfied, EPA will provide Notice of Completion to the Work Respondent. If EPA determines that any Work has not been completed in accordance with this Consent Order, EPA will notify the Work Respondent, provide a

list of the deficiencies, and require that Work Respondent modify the Work Plan to correct such deficiencies in accordance with the schedule contained in EPA's notice. The modified Work Plan shall be subject to approval as specified in Section XI (Submissions Requiring EPA Approval). The Work Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Removal Action Report in accordance with the EPA notice.

XXVIX. SEVERABILITY

111. If any judicial or administrative authority issues an order that invalidates any provision of this Consent Order, or finds that Work Respondent or an Owner Respondent has sufficient cause not to comply with one or more provisions of this Consent Order, then Work Respondent and Owner Respondents shall remain bound to comply with all other provisions of this Consent Order.

XXX. EFFECTIVE DATE

112. This Consent Order shall become effective upon receipt by Work Respondent and Owner Respondents of a fully executed and file-stamped copy of this Consent Order, as shown by the date on the certified mail receipts.

XXXI. SIGNATURE BY PARTIES

113. Each party to this Consent Order shall execute the Consent Order on the signature page by signing the appropriate signature line.

IT IS SO ORDERED

BY: Andrea Jirka DATE: 4/21/03
Andrea Jirka
Acting Director
Superfund Division
Region VII
United States Environmental Protection Agency

For the United States Environmental Protection Agency

BY: David Cozad DATE: 4/16/03
David Cozad
Associate Regional Counsel
Region VII
United States Environmental Protection Agency

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The representative of Respondent who has signed the signature page certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Order and to bind the party he/she represents to this document.

For THE DOE RUN RESOURCES CORPORATION

BY: Louis J. Maruchean

DATE: 2-14-02

Name: LOUIS J. MARUCHEAU

Title: VICE PRESIDENT LAW & ASST. SECRETARY

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BY: James Bess
Name: James Bess

DATE: 2/4/02

BY: Jayne Bess
Name: Jayne Bess

DATE: 2/4/02

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BY: Damon Black
Name: Damon Black

DATE: 2-6-02

BY: Helen Black
Name: ✓ Helen Black

DATE: 2-6-02

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BY: William Hart
Name: William Hart

DATE: 2-8-02

BY: Pamela Hart
Name: Pamela Hart

DATE: 2-8-02

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BY: Robert House
Name: Robert House

DATE: 01-16-2002

BY: Robin House
Name: Robin House

DATE: 01-16-2002

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BY: John McCulloch
Name: John McCulloch

DATE: 2/23/2022

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BY: Howard O. Nichols
Name: Howard Nichols

DATE: 4-16-03

BY: Darla Nichols
Name: Darla Nichols

DATE: 4-16-03

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BY: Donald P. Pinkston
Name: Donald Pinkston

DATE: 2-5-2002

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BY: James R Jenkins
Name: James R Jenkins
FOR: USCOC of Missouri RSA #13, Inc.

DATE: 4-8-2003